

**REMARKS**

Claims 1, 5-8, 10-11, 13, 15, 17-20, 22-24 and 41-51 are currently pending in this application. No new matter has been added. Claims 1, 13, 20, 42, and 49 are independent. Reconsideration and allowance of the subject application is respectfully requested.

**Rejections under 35 U.S.C. 102(b) and 103(a)**

Claims 1, 5, 6, 13, 20 and 42 are rejected under 35 U.S.C. 102(b) as anticipated by Sako et al. WO 02/37493. Applicants respectfully traverse this rejection.

In response to Applicants' previous arguments that Sako does not teach "a modulated unique pattern for the physical mark information having at least a part of the wobbled pits being shifted from a central line of the wobbled pits," the Examiner contends that this limitation is shown by Fig. 11D of Sako. (See pages 2-3 of the July 6, 2009 Office Action) However, as shown in Fig. 11D of Sako the pits overlap the center-line, and therefore fail to disclose or suggest "wobbled pits being shifted away from a central line of the wobbled pits," as recited in the independent claims.

Fig. 4 of the subject application reproduced below illustrates an example embodiment of the claimed wobbled pits. For purposes of discussion, a center line of the wobbled pits has been added in the drawing below. As shown, the wobbled pits do not overlap the center or central line because the wobbled pits are shifted away from the center line.

**FIG. 4**

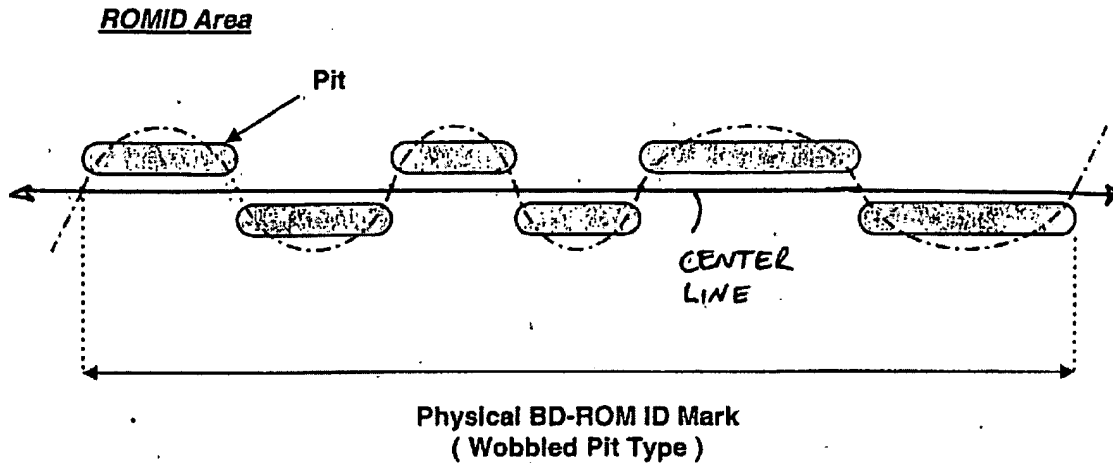


Fig. 11D of Sako fails to disclose or suggest such a feature.

Applicants also reiterate that Sako does not teach the selection between straight pits and wobbled pits, and therefore can not disclose or suggest "forming physical mark information as a pit type, the pit type selected from at least one of wobbled pits and straight pits in a specific area of a lead-in area of the recording medium," as recited for example, by claim 13 and similarly in the other independent claims.

Accordingly for the reasons set for above, Sako does not anticipate or render the independent claims obvious, and the claims dependent thereon are patentable at least for the reasons stated with respect to the independent claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Kuroda ('844).

Claims 8, 10, 15, 17, 19, 22, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Ha et al.

Claims 11, 18, 23, 24, 44, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims as stated above, and further in view of Official Notice.

Applicants respectfully traverse the above 103 rejections. Applicants submit that dependent claims 7-8, 10-11, 15, 17-19, 22-24, and 43-46 are allowable at least for depending from allowable base claims. In addition, Applicants submit that none of the cited references (Kuroda, Ha, or Official Notice) cure the deficiencies identified above with reference to Sako. Therefore, dependent claims 7-8, 10-11, 15, 17-19, 22-24, and 43-46 are allowable.

### **New Claims**

New independent claim 49 recites “at least a part of the wobbled pits forming the physical mark information wobble in a non-overlapping manner with respect to a central line of the wobbled pits,” and is patentable at least for the reasons discussed above with respect to the other independent claims.

New claims 50 and 51, dependent on claims 49 and 13, respectfully, and are patentable for the reasons stated above with respect to claims 49 and 13. Furthermore, claims 50 and 51 recite “the pit type selected from at least one of wobbled pits and straight pits in a specific area of a lead-in area of the recording medium is based on a type of the recording medium, and the type of recording medium is one of Read-Only, Recordable, and Rewritable types.” As discussed above, Sako fails to disclose or suggest a selection of pits let alone a selection based on the a

type of the recording medium, where the type of recording medium is one of Read-Only, Recordable, and Rewritable types.

**CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested.

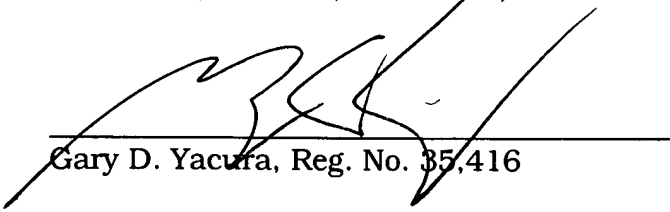
Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact Gary D. Yacura, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

  
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Gary D. Yacura, Reg. No. 35,416

P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

GDY: tlt